STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ADAN ARAMIS MONTES, ALEXANDRA ALISE MONTES, and AVIYONNE ACASIA-CHRISTINE ADAMS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ALEXIS ANTONIO MONTES,

Respondent-Appellant,

and

QUINCY WASHINGTON, BRIAN ADAMS, and AMBROSIA CHRISTINE-MARIE ADAMS,

Respondents.

UNPUBLISHED
March 8, 2007

No. 273081
St. Joseph Circuit Court
Family Division
LC No. 05-000520-NA

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Respondent[1] appeals as of right from the trial court orders[2] terminating his parental rights to the minor children under MCL 712A.19b(3)(h) and (n)(*i*). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent claims that he was denied due process by the trial court's taking of jurisdiction over the children based on the plea of their mother only, without providing him a trial on the allegations of the petition. Because this issue is not preserved for appellate review,

[1] All references to "respondent" refer to Alexis Antonio Montes only.

[2] The trial court entered two termination orders, one relating to Aviyonne only and one relating to Adan and Alexandra.

our review is limited to plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.*

Michigan case law clearly allows the taking of jurisdiction over a child based on the plea of only one parent. In *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002), where the father contended that his parental rights were erroneously terminated because there was no adjudication regarding him, this Court concluded that "the court rules simply do not place a burden on a petitioner like the [DHS] to file a petition and sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the Court can act in its dispositional capacity. The family court's jurisdiction is tied to the children, making it possible, under the proper circumstances, to terminate the parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding." *Id.* at 205. The primary consequence of the lack of adjudication specifically relating to respondent is that any grounds for termination of his parental rights would constitute "circumstances new or different from the offense that led the court to take jurisdiction" and would therefore have to be proven by clear and convincing *legally admissible* evidence. MCR 3.977(F)(1)(b) (emphasis added).[3] Thus, this Court in *In re CR*, *supra* at 205-206, held that "the petitioner must provide legally admissible evidence in order to terminate the rights of the parent who was not subject to an adjudication . . . ."

The father in *In re CR*, *supra* at 204-205, also argued that the denial of an adjudication and other alleged errors denied him due process by depriving him of notice of the allegations against him. The Court noted that the father did not claim a lack of notice of the hearing at which his parental rights were terminated and further found, based on the extensive allegations of the termination petition as well as the father's participation in a number of earlier hearings, that he had actual notice of the grounds on which termination was sought and was not denied due process. *Id.* at 204-205, 208-209. In the instant case, the record similarly reflects that respondent was personally served with notice of the termination hearing and with the termination petition specifying the factual basis on which termination was sought, but he did not participate in any hearings except the initial one in June 2005 and the final hearing at which his parental rights were terminated.

Applying a due process analysis to the facts of this case reveals no due process violation. The constitutional sufficiency of the procedure may be tested by the balancing test set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed2d 18 (1976):

> [I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional

[3] By contrast, when termination is not sought on the basis of new or different circumstances, the rules of evidence do not apply to the termination hearing. MCR 3.977(G)(2).

> or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute requirement would entail. [See also *In re AMB*, 248 Mich App 144, 209; 377 NW2d 421 (1985).]

It is clear that the interest in caring for one's child is a compelling one. *In re Render*, 145 Mich App 344, 349; 377 NW2d 421 (1985). However, the risk of an erroneous deprivation of the right because no adjudication was held on the allegations against respondent appears negligible when he has admitted that he committed criminal sexual conduct against a sibling of the minor children and will be incarcerated until, at least, 2010. Further, while the adjudication established the state's temporary custody over the children, respondent could not be permanently deprived of parental rights absent a finding that a statutory basis for that action was established by clear and convincing evidence, MCL 712A.19b(3), a standard which the United States Supreme Court deemed adequate to satisfy the dictates of due process. *Santosky v Kramer*, 455 US 745, 767; 102 S Ct 1388; 71 L Ed2d 599 (1982). The probable value of an adjudication trial concerning the specific allegations against respondent was minimal because he does not dispute that he committed criminal sexual conduct against a sibling of the children. Finally, the government has a significant interest in protecting the welfare of the children. *In re Brock*, 442 Mich 101, 112-113; 499 NW2d 752 (1993). Weighing all of these factors, we conclude that where jurisdiction over the children was established by their mother's plea, the denial of an adjudicative trial relating to allegations against respondent did not deny him due process. Accordingly, no plain error occurred.[4]

Respondent also asserts that a remand is required because the trial court did not make findings on the record concerning the best interests of the children. Again, because this issue is not preserved for appellate review, our review is limited to plain error affecting substantial rights. *Kern, supra* at 336.

In *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), this Court noted that "[n]either the statute nor the court rule requires the court to make specific findings on the question of best interests, although trial courts usually do." Where no party offers evidence that termination is clearly not in the best interests of the child, trial court findings concerning the child's best interests are not required. *Id.* at 678. "For a valid termination order to be entered

[4]Respondent also states that he was entitled to notice of the adjudication, but because he fails to elaborate on this point or to cite any authority in connection with it, the issue is abandoned. *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005); *Yee v Shiawassee Co Bd of Com'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Likewise, his unelaborated comment that his telephonic participation in hearings was not secured after his incarceration as required by MCR 2.004(F) is not included in his statement of issues presented, and is not accompanied by citation to any authority other than MCR 2.004. Therefore, this issue is also abandoned. *Yee, supra* at 406. In any event, we note that jurisdiction over respondent was obtained by personal service before the termination hearing, MCL 712A.12. We further conclude that neither of these alleged errors would affect the outcome of this matter.

when no evidence is offered that termination is clearly not in the child's best interests, all that is required is that at least one statutory ground for termination be proved." *Id.*

Here, no evidence was offered to suggest that termination of respondent's parental rights was contrary to the best interests of the children. Moreover, the statutory grounds for termination were adequately supported by legally admissible evidence. MCR 3.977(F)(1)(b). Termination was warranted under MCL 712A.19b(3)(n)(*i*) because respondent admitted that he committed criminal sexual conduct against the children's sibling, then age four or five. It is well established that a parent's treatment of one child is probative of how he may treat other children. *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973); *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Where respondent sexually abused the children's sibling, it is reasonable to conclude that the continuation of the parent-child relationship would be harmful to the children and is, therefore, not in their best interests. MCL 712A.19b(3)(n)(*i*). Since respondent's earliest release date is in January 2010, it is also clear that that he cannot provide the children with a normal home for at least two years, and cannot provide proper care and custody for them within a reasonable time. MCL 712A.19b(3)(h). The testimony of the foster care worker further indicated that respondent failed to provide proper care and custody for the children after they were placed in foster care. *Id.*

Because no evidence was presented to show that termination of respondent's parental rights was contrary to the best interests of the children, and where the evidence was sufficient to establish at least one statutory ground for termination, the trial court's failure to make specific best interest findings on the record does not constitute error, much less plain error. *Kern, supra* at 336; *In re Gazella, supra* at 678.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette